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FILED

APR 06 2004

Division of Consumer Affairs

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY: CHANCERY DIVISION
DOCKET NO. MON-C-205-03

PETER C. HARVEY,
Attorney General
of THE STATE OF NEW JERSEY
and RENI ERDOS, Director,
New Jersey Division of
Consumer Affairs

Plaintiffs,

vs.

CYTODYNE TECHNOLOGIES, INC.
(a New Jersey Corporation)
et al.,

Defendants.

~~CONSENT ORDER AND~~
SETTLEMENT AGREEMENT

WHEREAS, PETER C. HARVEY, the Attorney General of the State of New Jersey and RENI ERDOS, the Director of the Division of Consumer Affairs (collectively, the "State"), have brought claims against RUSSELL HARRELL, M.D., ("Dr. Harrell") in the above-captioned action (the "Action") that allege violations of N.J.S.A. 56:8-1, et seq. (the "Consumer Fraud Act") in connection with his agreement to provide a testimonial for a product called Xenadrine RFA-1;

Mar 24 2004 16:45 P.04

WHEREAS, the State and Dr. Harrell wish to settle the claims against Dr. Harrell pursuant to the terms of this Consent Order and Settlement Agreement (the "Settlement Agreement");

NOW, THEREFORE, it is on this 26 day of March 2004,

ORDERED AND AGREED as follows:

1. Dr. Harrell does not admit to any violations of the Consumer Fraud Act.

2. Doctor Harrell agrees that by entering into this Settlement Agreement he will not ~~take any action to challenge the Court's October 24, 2003 order denying his motion to dismiss the claims alleged against him in the Action for failure to state a claim (the "October 24, 2003 Order") or~~ oppose an application by the State for the Court to prepare and submit for publication a decision in support of the October 24, 2003 Order;

3. Doctor Harrell agrees to cooperate with the State in the prosecution of its action against Cytodyne Technologies, Inc., Robert Chinery and any other agent or employee of Cytodyne Technologies, Inc. (collectively, the "Cytodyne Defendants") by:

- not moving to quash a subpoena to appear as a witness for the State;
- not moving to quash a subpoena by the State to provide non-privileged documents that relate to the testimonial that he provided to Cytodyne Technologies, Inc. that are in his possession and control;
- making himself available, at the State's request, to work with his attorney to submit certifications in this Action,

give testimony in a deposition in this Action, or give testimony at the trial in this Action on the topics set forth in paragraph 4 below;

- giving the State notice and an opportunity to review the testimony he intends to provide on the topics set forth in paragraph 4 before the testimony is introduced into evidence; and
- agreeing to refrain from discussing the case, individually or through counsel, with the Cytodyne Defendants or any person he reasonably believes is acting on behalf of the Cytodyne Defendants unless the discussion is pursuant to a subpoena or other order of a court.

4. Doctor Harrell agrees to provide testimony on the following topics that is consistent with his deposition testimony:

- the circumstances under which Kelly Conklin approached him to provide a testimonial;
- any representations Conklin made about the safety or efficacy of Xenadrine RFA-1;
- the circumstances relating to the preparation or negotiation of the contract he eventually signed with Cytodyne;
- his understanding of whether Cytodyne would provide him with new information relating to the safety or efficacy of Xenadrine RFA-1 as it became available;
- what information Cytodyne subsequently provided him concerning the safety or efficacy of RFA-1; and
- what information Cytodyne subsequently provided him about the use of his testimonial in advertisements for RFA-1

and whether he consented to the subsequent uses of his testimonial.

5. Doctor Harrell agrees to pay the State \$15,500 for (a) administrative and investigative costs (\$500), and (b) a contribution, pursuant to N.J.S.A. 56:8-14.6, to the Consumer Fraud Education Fund (\$15,000). An initial payment of \$3,875 shall be made when Dr. Harrell executes the Settlement Agreement. Additional payments of \$3,875 shall also be made on or before each of April 1, 2004, May 3, 2004, and June 1, 2004. Each payment shall be made by guaranteed funds such as a wire transfer, certified check, or money order. Payment shall be made when Dr. Harrell executes the Settlement Agreement. Payment shall be made by guaranteed funds such as a wire transfer, certified check, or money order.

6. Doctor Harrell agrees, and is hereby ordered, to refrain from providing any testimonial for a commercial product that purports to be based on his credentials as a medical doctor unless he has a scientific basis for the statements in the testimonial. In addition, Dr. Harrell agrees that for a period of two years from the date of the Settlement Agreement, he will provide the State with a copy of any agreement he enters into provide a testimonial for a commercial product that is based on his credentials as a medical doctor.

7. If Doctor Harrell breaches the settlement agreement by giving testimony that is materially different from the testimony he

represented he would give to the State and a court determines that his representation to the State was made with reckless disregard for the truth, then he will be liable for liquidated damages of \$15,000 for breach of the Settlement Agreement and his breach will be reported to the Board of Medical Examiners (the "Board").

8. The Division of Consumer Affairs releases Doctor Harrell from all claims alleged against him in the Action and any other claims it have might have had against him relating to advertisements for Xenadrine RFA-1 or any other Cytodyne product.

9. All notices to the State required by the Settlement Agreement shall be made to Joshua T. Rabinowitz, DAG, Division of Law and Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey, 07101.

10. The Settlement Agreement is the entire agreement between the State and Dr. Harrell with respect to the subject matter of the agreement.

11. Any amendment to the Settlement Agreement must be in writing and signed by the State and Dr. Harrell.

12. The parties acknowledge that for the purpose of enforcing the Settlement Agreement, New Jersey law shall govern the terms and provisions herein.

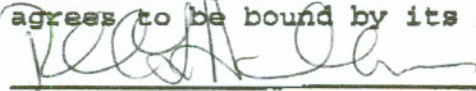
PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

BY:


Reni Erdos, Director New Jersey
Division of Consumer Affairs

DATED:  2004

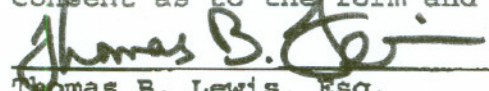
The undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.



DATED: March 24, 2004

Russell Harrell, Jr., M.D., Respondent

Consent as to the form and entry of this Order.



DATED: March 29, 2004

Thomas B. Lewis, Esq.
Attorney for Respondent